the moment I have no views at all as to the merits. In view of the terms of the will, which is the trust instrument in this case, in the absence of fraud it would not appear that the plaintiffs would have any redress once the transaction had gone through; as the whole matter can be brought to trial shortly, I consider that the satisfactory course is to continue the caveat until the matter, which is one of very great importance, can be disposed of at the hearing.

Costs in cause.

Order accordingly.

[REVISIONAL CRIMINAL JURISDICTION]
POYSER, C.J.
April 10, 1939.

PUBLIC PROSECUTOR v. V. MUKAYAN.

[SEPANG CRIMINAL CASE No. 646 of 1939]

Road Traffic Enactment, 1937, S. 12 (3)—Using a private car as a "goods vehicle."

The accused in this case was charged at the Magistrate's Court, Sepang on the 28th December, 1939, with using a private car to carry goods to wit toddy, thereby committing a breach of the condition of his licence, an offence under section 12 (3) of the Road Traffic Enactment, 1937. He pleaded guilty to the charge and was convicted and fined $5/- and costs.

On reference by the Public Prosecutor, Federated Malay States, to the Chief Justice, Federated Malay States.

Held, that in view of the definition of 'goods vehicle' in section 2 of the Road Traffic Enactment, 1937 and in the Motor Vehicles (Registration and Licensing) Rules, 1937 the car in question was not adapted for use as a goods vehicle, and therefore no offence had been committed.

Poyser, C.J.—This case was brought to my notice by the Public Prosecutor. The accused was charged with, and pleaded guilty to, the following offence:—

> "That you at 2.45 p.m. on 28.11.39 in front of Police Station, Sungei Pelek, being the driver of motor car No. S.L. 3508 licensed as a private car did use the vehicle to carry goods to wit toddy and thereby you have committed a breach of the condition of your licence, an offence under section 12 (3) Enactment No. 17/39."

No evidence was recorded, but the following facts appear from a report by the Transport Board.

The motor vehicle S.L. 3508 is an ordinary private car licensed as such. It has in no way been adapted for the carriage of goods, but the owner was in the habit of using it for carrying toddy to various estates. A goods vehicle is defined in the Road Traffic Enactment (section 2) as:—.

> "A motor vehicle constructed or adapted for the carriage of goods or a trailor so constructed or adapted."

There is a further definition in the Motor Vehicles (Registration and Licensing) Rules, viz:—

> "The expression 'goods vehicles' means motor vehicles (including motor cycles weighing more than eight hundred-weight unladen) constructed or adapted for use and used for the haulage or conveyance of goods or burden of any description whether in the course of trade or otherwise."

This car S.L. 3508 does not come within either of these definitions and, therefore, I do not see how the owner could properly be convicted of using his car as a 'goods vehicle' under section 12 (3) of the Enactment, nor did he commit an offence against the provisions of section 82, viz: using a goods vehicle for the carriage of goods without a carrier licence.

The car in question was not adapted for use as a goods vehicle, and therefore no offence was committed.

Acting in revision, therefore, I set aside the conviction, and the fine which has been paid will be refunded to the accused.

Conviction quashed.

[ORIGINAL CIVIL JURISDICTION]
CUSSEN, J.
October 16, 1939.

HENDRIK CHRISTIAAN VAN HOOGSTRATEN
v.
LOW LUM SENG.

[SELANGOR CIVIL SUIT No. 27 of 1939]

Alien enemy—fatal accidents—deceased an alien enemy—claim for damages for loss of expectation of life—suit by administrator—whether maintainable.

The plaintiff as the administrator of the estate of a deceased German national sued the defendant for damages for loss of expectation of life as a result of fatal injuries received by the deceased in a collision between the deceased's car and the defendant's motor lorry. The suit was commenced in March, 1939, placed in the fixing List of 15th July, and fixed for hearing on the 19th September 1939. On the 11th of September 1939, after the outbreak of war, the defence was amended by the addition of a paragraph alleging that the plaintiff was an enemy alien and/or sued on behalf of enemy aliens.

Held, that the Federated Malay States were at war with Germany and therefore the general rule of law that an enemy alien cannot sue as a plaintiff in English Courts applied but that as the action was properly and validly instituted and proceeded so to the commencement of the war it should be stayed during the continuance of hostilities, and not dismissed.

Cases referred to:—

(1) *Alcinous v. Nigreu,* 119 E.R. 84.

(2) *Antoine v. Morsheed,* 128 E.R. 1025.

(3) *Anonymous Case,* 74 E.R. 889.